

ARTICLE 74:09

PROCEDURES -- BOARD OF MINERALS AND ENVIRONMENT

Chapter

74:09:01 Contested case procedure.

CHAPTER 74:09:01

CONTESTED CASE PROCEDURE

Section

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74:09:01:01. Petition to initiate contested case. In order to request a contested case hearing, a person shall file a petition which contains the following information with the department pursuant to the requirements of § 74:09:01:07:

- (1) A statement of the petitioner's interest in the involved matter;
- (2) A statement of the departmental recommendation contested, if any, and the relief and decision requested from the board;
- (3) A statement alleging the relevant facts and issues known to the petitioner upon which the contest or request of the board is based;

(4) A statement of the legal authority and jurisdiction under which the hearing would be held, if known;

(5) A reference to the particular statutes and rules involved, if known; and

(6) The signature of the petitioner or the petitioner's attorney.

The petitioner shall serve a copy of the petition upon all known persons affected by the request who shall be considered parties to the proceeding.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-17, 1-26-27, 34A-1-43.

74:09:01:02. Board initiation of contested case. The board may on its own motion request that any matter under its jurisdiction be scheduled for a contested case hearing. The department shall give notice to the parties and the public of any hearing requested on a motion of the board and of the reasons for requesting the hearing. The hearing shall follow the provisions of this chapter insofar as practicable.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-17, 1-26-27, 34A-1-43.

74:09:01:03. Answer to petition to initiate contested case. Within 20 days after receipt of a petition for a contested case, all parties other than the department shall serve written answers. The answers shall be served on the petitioner, department, and other parties of record. The answers shall respond to the allegations in the petition and state the desired decision of the board. Failure to answer an allegation in a petition constitutes an admission of that fact. Further pleadings by parties in response to an answer are not required unless the chair of the hearing orders them for purposes of clarification of the issues involved in the contested case.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-17, 1-26-27, 34A-1-43.

74:09:01:04. Intervention in contested case. A person who desires to intervene in a contested case proceeding shall file a petition that substantially conforms to the requirements of § 74:09:01:01. The petition shall be filed with the department and served on all parties of record. Pleadings in response to an intervenor's petition may not be made unless the chair of the hearing orders them for purposes of clarification of the issues involved in the contested case. The chair of the hearing may grant or deny the petition to intervene at the prehearing conference.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.1, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-17.1, 34A-10-2, 34A-1-43.

74:09:01:05. Initiation of enforcement hearing. The department shall initiate an enforcement hearing by filing a petition that substantially complies with the requirements of

§ 74:09:01:01. The department shall serve a notice of a contested case which complies with the provisions of SDCL 1-26 and a copy of the petition upon the alleged violator.

Source: 14 SDR 50, effective October 4, 1987.

General Authority: SDCL 34A-1-6, 34A-1-43, 34A-6-5, 34A-11-9, 45-9-62.

Law Implemented: SDCL 1-26-16, 1-26-17, 34A-1-46, 34A-1-48, 34A-1-49, 34A-11-15, 34A-11-18, 45-6B-48, 45-6B-49, 45-6B-50, 45-6C-37, 45-6C-38, 45-6D-51, 45-6D-52, 45-6D-53, 45-9-64, 45-9-70.

74:09:01:06. Intervention in enforcement hearings not allowed. No person may intervene in a contested case hearing which is an enforcement action against an alleged violator.

Source: 14 SDR 50, effective October 4, 1987.

General Authority: SDCL 34A-1-6, 34A-1-43, 34A-6-5, 34A-11-9, 45-9-62.

Law Implemented: SDCL 1-26-17.1, 34A-1-46, 34A-1-48, 34A-1-49, 34A-11-15, 34A-11-18, 45-6B-48, 45-6B-49, 45-6B-50, 45-6C-38, 45-6D-51, 45-6D-52, 45-6D-53, 45-9-64, 45-9-70.

74:09:01:07. Pleadings to be filed with department. The original of any petition, motion, or other pleading shall be filed with the secretary of the department. Filing of the pleadings or documents shall be effectuated by delivery in person, by facsimile, by mail, or by courier to the department by the date the pleadings or documents are due. The person filing the pleading shall serve copies of the documents or pleadings on the chair of the hearing, the hearing examiner if applicable, and all parties of record.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-21, 34A-1-43.

74:09:01:08. Appointment of chair of hearing. Upon the filing of a petition for a contested case, or upon the board's motion, the chair of the board shall appoint a member of the board to act as chair of the hearing. Notice of this appointment shall be served on all parties by the department. The chair of the hearing is responsible for the conduct of the prehearing conference and the hearing and may rule on all prehearing motions, including motions to intervene, motions for a continuance, discovery motions, and any other motions necessary to ensure an orderly hearing process. Any decision made by the chair of the hearing is a final decision of the board unless the board overrules the decision of the chair of the hearing.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-18, 1-26-19, 1-26-19.2, 34A-1-43.

74:09:01:09. Motions. Any party may make a motion by filing it in writing with the department. Copies of the motion shall be served on the chair of the hearing and all parties of record. The motion shall contain the factual and legal bases for the motion. The chair of the hearing may hear the motion and decide on it at the prehearing conference or at the contested case hearing before the board.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-18, 1-26-19, 1-26-19.2, 34A-1-43.

74:09:01:10. Prehearing conference. The chair of the hearing may hold a prehearing conference on request by a party or at the discretion of the chair of the hearing. The chair of the hearing may decide prehearing motions and establish a reasonable discovery schedule at this conference. The chair of the hearing may also set the time and place of the hearing of the petition before the board if it has not already been scheduled or if a continuance is requested. Any other issue properly discussed at a pretrial conference under the rules of civil procedure may be heard at the prehearing conference.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-18, 1-26-19, 1-26-19.2, 34A-1-43.

Cross-Reference: Rules of civil procedure, SDCL chapter 15-6.

74:09:01:11. Notice of contested case. The department shall issue a notice of a contested case hearing which complies with the provisions of SDCL chapter 1-26. The notice shall refer to all petitions filed with the department as of the date of the notice and shall be served on all parties of record.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-16, 1-26-27, 34A-1-43.

74:09:01:12. Subpoenas. The chair of the hearing may issue any subpoena necessary for the conduct of any prehearing discovery or the hearing in accordance with the rules of civil procedure. Any party wishing to obtain a subpoena from the chair of the hearing shall submit a written request and a proposed subpoena to the chair of the hearing.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-19.1, 34A-1-43.

Cross-Reference: Rules of civil procedure, SDCL chapter 15-6.

74:09:01:13. Conduct of hearing. The chair of the hearing shall act as the chair of the board for the contested case hearing and shall make all necessary evidentiary rulings during the proceeding.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-29, 34A-1-43.

74:09:01:14. Transcripts. Any party wishing to obtain a transcript of a contested case hearing must make arrangements with a court reporter prior to the hearing. The department or the board may, on its own motion, have a transcript of a contested case proceeding prepared; however, parties must obtain copies of the transcript from the court reporter at their expense.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-22, 34A-1-43.

74:09:01:15. Service. The service of all pleadings, notices, or orders may be made by first class mail, personal service, or facsimile. An affidavit of mailing, an admission of service, or other competent evidence is proof of service.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-19, 34A-1-43.

74:09:01:16. Degree of proof required. Whenever, under the provisions of this chapter, a person is required to find, demonstrate, show, or otherwise establish a fact, that fact must be established by a preponderance of the evidence.

Source: 14 SDR 50, effective October 4, 1987.

General Authority: SDCL 34A-1-6, 34A-1-43, 34A-6-5, 34A-11-9, 45-9-62.

Law Implemented: SDCL 1-26-19.

74:09:01:17. Appointment of hearing examiner. The chairman of the board may appoint a hearing examiner to conduct the hearing of the contested case. After hearing the proceeding, the hearing examiner shall make proposed findings of fact, conclusions of law, and an order to the board. A copy shall be served upon all parties of record. The board shall allow all parties to object in writing to the hearing examiner's recommended decision and to present oral argument prior to the board rendering a final decision on the contested case proceeding.

Source: 14 SDR 50, effective October 4, 1987.

General Authority: SDCL 34A-1-6, 34A-1-43, 34A-6-5, 34A-11-9, 45-9-62.

Law Implemented: SDCL 1-26-18.1.

74:09:01:18. Decision of board. A final decision in a contested case shall be that obtained by a majority vote from a quorum of the board. Any final decision and resulting orders shall be signed by the hearing chairman of the board.

Source: 14 SDR 50, effective October 4, 1987.

General Authority: SDCL 34A-1-6, 34A-1-43, 34A-6-5, 34A-11-9, 45-9-62.

Law Implemented: SDCL 1-26-23, 1-26-25.

74:09:01:19. Findings of fact, conclusions of law, and orders. All parties to a contested case proceeding shall present proposed findings of fact, conclusions of law, and an order to the board. The board may adopt or reject proposed findings and conclusions and shall adopt orders in support of its decision. The adopted findings of fact, conclusions of law, and orders constitute the final decision of the board. The department shall serve written notice of the findings, conclusions, and order on all parties to the proceeding.

Source: 14 SDR 50, effective October 4, 1987; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 34A-1-6, 34A-6-1.6, 34A-6-1.14, 34A-11-9, 45-9-13.

Law Implemented: SDCL 1-26-23, 1-26-25, 34A-1-43.

